

ESTTA Tracking number: **ESTTA661127**

Filing date: **03/15/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Structure Enterprises N.V.
Granted to Date of previous extension	03/15/2015
Address	San Sebastian B 15 Willemstad, CURACAO, 0000 CW NETHERLANDS ANTILLES
Attorney information	Brooks R. Bruneau FisherBroyles, LLP 100 Overlook Center Second Floor Princeton, NJ 08540 UNITED STATES docketing@fisherbroyles.com, brooks.bruneau@fisherbroyles.com, denise.mcculloch@fisherbroyles.com Phone:609 454-6772

### Applicant Information

Application No	86165457	Publication date	09/16/2014
Opposition Filing Date	03/15/2015	Opposition Period Ends	03/15/2015
Applicant	Premier Homecare Options, LLC 1282 SMALLWOOD DRIVE WEST SUITE 357 WALDORF, MD 20603 UNITED STATES		

### Goods/Services Affected by Opposition

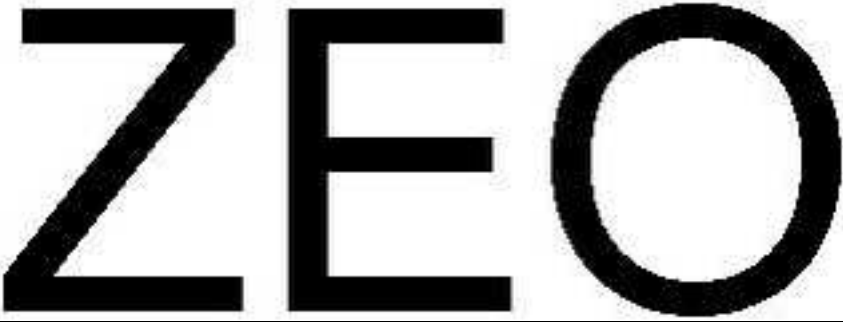
Class 032. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Flavored waters; Soft drinks, namely, sodas; Water beverages


### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	No intention to use in U.S. Commerce (Trademark Act Section 1(b))

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4166389	Application Date	10/20/2011
Registration Date	07/03/2012	Foreign Priority	06/17/2011

		Date	
Word Mark	ZEO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Beers; mineral and aerated waters and other non-alcoholic drinks, namely, sodas, non-alcoholic beer and wine; fruit drinks and fruit juices; syrups for making beverages and preparations for making beverages, namely, fruit drinks Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages except beers		

U.S. Registration No.	4390107	Application Date	08/30/2012
Registration Date	08/27/2013	Foreign Priority Date	04/02/2012
Word Mark	ZEO		
Design Mark			
Description of Mark	The mark consists of a stylized word "ZEO" wherein the left-side of the letter "E" is missing and the top and bottom rectangular bars have rounded exterior corners and the short, center bar is comprised of a rectangle.		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Beers, mineral and aerated waters; softdrinks; fruit beverages; fruit juices and concentrates; syrups or powders used in the preparation of soft drinks Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages except beers		

Attachments	79107969#TMSN.png( bytes ) 79119059#TMSN.png( bytes )
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	ZEOLITE Notice of Opp fn.pdf(183014 bytes )
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## **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/brooks r. bruneau/
Name	Brooks R. Bruneau
Date	03/15/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="display: flex; justify-content: space-between;"><div style="width: 80%;"><p>STRUCTURE ENTERPRISES N.V.,</p><p style="text-align: center;">Opposer,</p><p>v.</p><p>PREMIER HOMECARE OPTIONS, LLC,</p><p style="text-align: center;">Applicant.</p><hr style="border: 0; border-top: 1px solid black; margin-top: 10px;"/></div><div style="width: 15%; text-align: center; font-size: 2em;">:</div></div>	<p><b>Opposition No.:</b> _____</p> <p><b>Application No.: 86165457</b></p> <p><b>Mark: ZEOLITE</b></p> <p><b>Published: September 16, 2014</b></p>
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**NOTICE OF OPPOSITION**

Structure Enterprises, N.V. (Opposer) believes that it will be damaged by registration of the above identified trademark, and hereby opposes the registration thereof, and alleges as follows:

**FACTS**

1. Opposer is a limited liability company of The Netherlands with a business address of San Sebastian, B 15 Willemstad, Curacao, Netherlands Antilles.

2. Opposer is the owner of the following ZEO trademarks:

TRADEMARK	REG. NO.	REG. DATE	GOODS
	4166389	Jul. 03, 2012	Class 32: Beers; <u>mineral and aerated waters</u> and other non-alcoholic drinks, namely, <u>sodas</u> , non-alcoholic beer and wine; fruit drinks and fruit juices; syrups for making beverages and preparations for making beverages, namely, fruit drinks. Class 33: Alcoholic beverages except beers
	4390107	Aug. 27, 2013	Class 32: Beers, <u>mineral and aerated waters; soft drinks</u> ; fruit beverages; fruit juices and concentrates; syrups or powders used in the preparation of soft drinks. Class 33: Alcoholic beverages except beers

The above listed trademarks are hereinafter referred to as “ZEO Marks”.

3. The above captioned goods are hereinafter referred to as “Opposer’s Beverage Goods.”

4. Opposer’s rights in its ZEO Marks date back to at least as early as June 17, 2011.

5. Upon information and belief, Premier Homecare Options, LLC, is a limited liability company of the State of Maryland, with a business address of 1282 Smallwood Drive West, Suite 357, Waldorf, Maryland 20603.

6. Applicant filed Application Serial No. 86165457 for the mark “ZEOLITE” (hereinafter referred to as “Applicant’s Mark”) in connection with the following goods:

Flavored water; soft drinks, namely, sodas; water beverages. (Class 32)

## **COUNT ONE**

### **Likelihood of Confusion and False Connection**

7. Opposer repeats and reallages the statements and allegations set forth above as if fully set forth in this Count.

8. The commercial impression created by Applicant's Mark is similar to that of Opposer's Marks. Applicant has merely added the generic term "LITE" to Applicant's "ZEO" mark by suggesting a "light" or low calorie version of Opposer's Beverage Goods branded with the ZEO Marks.

9. Opposer has registered its ZEO Marks in connection with a variety of beverages including water and sodas, and Applicant seeks to register ZEOLITE also in connection with water and sodas, along with other beverages.

10. Because Applicant's ZEOLITE mark is so similar to Opposer's ZEO Marks, registration of Applicant's mark is likely to cause confusion, mistake or deception among consumers as to the source of Applicant's goods, and is likely to falsely suggest a common association, affiliation, sponsorship or origin of said goods between Applicant and Opposer, causing damage to Opposer. Moreover, any fault, disappointments, complaints or other dissatisfaction a consumer might experience with the goods of Applicant under the ZEOLITE mark would inure to the detriment of Opposer. As such, Applicant is not entitled to registration pursuant to 15 USC §1052(d).

11. The difference between Applicant's ZEOLITE mark and the ZEO Marks of Opposer is so minor because "LITE" is a generic term in the beverage industry such that when coupled with ZEO it does create a false suggestion of a connection between Applicant and Opposer.

12. Opposer asserts that the ZEOLITE mark sought to be registered is a close proximity of the ZEO Marks and name previously registered by Opposer.

13. The ZEOLITE mark would be recognized as a close approximation of the ZEO Marks and name used by Opposer.

14. The mark ZEOLITE would be recognized as that close approximation such that consumers are likely to recognize the ZEOLITE mark as pointing unmistakably to Opposer and its ZEO Marks.

15. Opposer is not connected or affiliated with Applicant, Applicant's activities or Applicant's ZEOLITE mark.

16. The reputation of Opposer and its ZEO Marks is of such a nature that a connection between Applicant and Opposer would be presumed by consumers when Applicant's mark is used with its beverage goods listed in the application.

17. Accordingly, Applicant's ZEOLITE mark falsely suggests a connection with Opposer and its ZEO Marks, in violation of Lanham Act Section 2(a), and therefore is not entitled to registration.

## **COUNT TWO**

### **No Intent to Use in U.S. Commerce**

18. Opposer repeats and realleges the statements and allegations set forth above as if fully set forth in this Count.

19. Opposer asserts that in violation of Trademark Act Section 1(b) Applicant did not have a bona fide intention to use the ZEOLITE mark in U.S. commerce in connection with all the goods listed in Application Serial No. 86165457 at the time of filing that application.

20. Due to the failure of Applicant to have a genuine bona fide intention to use the ZEOLITE mark with all of the goods listed in Application Serial No. 86165457, that application is void.

[Continued Next Page]

**WHEREFORE**, Opposer requests that the Board sustain the Opposition and refuse registration of Application serial No. 86165457.

Respectfully submitted:

**STRUCTURE ENTERPRISES N.V.**

Dated: March 15, 2015

By: /Brooks R. Bruneau/  
Brooks R. Bruneau, Esq.  
Attorney for Opposer  
FISHERBROYLES, LLP  
100 Overlook Center  
Second Floor  
Princeton, NJ 08540  
Tel: 609-454-6772

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify this Notice of Opposition was electronically filed with the Trademark Trial and Appeal Board this 15<sup>th</sup> day of March, 2015.

/Brooks R. Bruneau/  
(Signature)  
March 15, 2015  
(Date of Signature)



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Notice of Opposition was served upon Applicant's counsel of record, via First Class Mail, Postage Prepaid, on this 15<sup>th</sup> day of March, 2015 addressed to:

BRENT D. SAUSSER  
THE LAW FIRM OF SAUSSER AND SPURR  
2 ROSEDALE DR  
CHARLESTON, SOUTH CAROLINA 29407

Dated: March 15, 2015

By: /Brooks R. Bruneau/  
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